IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

CRP.NPD.NO.1107 OF 2006
AND
CMP.NO.1 of 2006

Jayanthiammal ....Petitioner

Vs.

1.S.Dhanasekar
2.D.SankarRaj .... Respondents

This Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the fair and decretal order dated 28.3.2006 made in RCA.No.2 of 2005 on the file of learned Rent Control Appellate Authority-cum-Principal Sub Judge, Krishnagiri reversing the fair and decretal order dated 29.7.2005 made in RCOP.No.8 of 2002 on the file of learned Rent Controller-cum-District Munsif, Krishnagiri.

For petitioner: Mrs.S.Agalya
for Mr.K.Nagarajan

For Respondents: Ms.Poornima

O R D E R

Challenge is made to the order of eviction passed by the Rent Control Appellate Authority, Krishnagiri made in RCA.No.2 of 2005 whereby the Rent Control Appellate Authority reversed the order of the Rent Controller rejecting the request for eviction in RCOP.No.8 of 2002 .

2. The respondent/landlord filed a petition for eviction of the revision petitioner/tenant alleging that the property in question belonged to the landlord's family, that the property was originally leased out to one Velayudham Pillai, the husband of the petitioner/tenant in the year 1952 on the monthly rent of Rs.17/- and it was gradually raised from Rs.17/- to Rs.125/- during the relevant period and despite oral demands, there was rental arrears from Februray 2000 to January 2003 and thus it was wilful default. The tenant has made some alterations

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which would detriment the value of the building and no written consent was received for the same from the landlord. The property was also sub-let to other parties. Hence on those grounds, the eviction must be ordered.

3. The petition was resisted by the petitioner/tenant stating that rent was regularly paid and endorsement was used to be made in a pocket note-book and the rent was paid till June, 2002 and from July 2002, the landlord refused to receive the rent . Under such circumstance, a petition in OP.No.1 of 2003 was filed by the tenant for the purpose of depositing rental arrears and the respondent has also filed a petition in M.P.No.6 of 2003 for recovery of rental for the period of eight months. Since OP. has been filed and it has been allowed, the monthly arrears have been deposited. Under such circumstances, there was no default much less wilful default by the petitioner/tenant. The petitioner/tenant is living with her family members and they are not the sub-tenants and Advocate Commissioner was appointed has made an inspection and found that no alternations were made and only there was wooden partition and thus all the grounds raised by the landlord have to be rejected. On enquiry the Rent Controller, not convincing with the case of the landlord,has dismissed the Rent Control Petition. Aggrieved landlords took it on appeal, the Rent Control Appellate Authority after looking into the materials available on record, has passed an order of eviction on the ground found in the application. Aggrieved tenant has brought forth this Civil Revision petition.

4. In support of the revision petition, learned counsel for the petitioner/tenant reiterated the contentions put forth before the forum below and would further request that the order of the rent Controller may be restored and the order of the Rent Conrol Appellate Authority may be set aside.

5. Heard the learned counsel for the respondent on the above contentions.

6. Concededly, the revision petitioner herein is the tenant under the landlord on the monthly rent of Rs.125/- during the relevant period. According to the specific case of the landlord before the lower Court that there was rental arrears from February, 2000 to January 2003. On the contrary, the case of the petitioner/tenant was that the rents have been paid till June, 2002 regularly and the landlord used to make endorsement in a pocket note-book about the payment of rental, that the said note book was actually handed over to one Sali Boy who is the agent of the landlord and he did not return the said book. Taking advantage of the situation, a case was filed stating that rental arrears stands from February 2000 to January 2003 and no notice was issued for the said default, before filing the RCOP. All would go to show that there was no default much less wilful

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default. Learned counsel for the revision petitioner would submit that the tenant being a old lady is living with her daughters and Sons-in-law,. Hence, at no stretch of imagination the question of sub letting would arise. There cannot be any alteration of the building or detrimental to the value of the building. Hence,the Rent Controller dismissed the petition, but it was erroneously set aside by the appellate authority. Hence, the order of the appellate forum must be set aside.

7. After considering the rival submissions made, this Court is of the considered opinion that Civil Revision Petition does not carry merit whatsoever. Inso far as the ground of sub letting is concerned, this Court is unable to see any ground in the contentions of the landlord. Admittedly, the tenant is living with his daughters and Sons-in-law. Under the said circumstances, it cannot be stated to be sub letting and so far as other ground of alteration of the building is concerned, even as per evidence, it could be seen that the old landlady is living with his family members, therefore it cannot be detrimental to the value of the building. These two grounds have been rightly rejected by the Rent Controller. But,in so far as wilful default is concerned, this Court is of the considered opinion that the landlord has a good case. Admittedly, even according to the landlord, there was rental arrears from February 2000 to January, 2003. According to the tenant, rent has been paid till June 2002 and from July 2002 to January,2003, there was arrears of rent for a period of eight months. At this juncture, it is an admitted position that they maintained a pocket note book in which the endorsement has been made by the landlord which is kept by the tenant/revision petitioner. According to the revision petitioner, the payment of rents till June, 2002 was paid with proper endorsement, but it was handed over to one Sali Boy. According to the revision petitioner, the Sali Boy who is the agent of the landlord and the case of the petitioner/tenant is that after it was given to the said Sali Bay, it was never returned. Therefore, taking advantage of the situation, the respondent/landlord came with a false case. Had it been true the said Sali Boy who is the agent of the landlord has not returned the said book, immediately the tenant should have given a notice for the return of the said book, but he has not done so. Even in this case, he has not paid the rent for eight months continuously from July 2002 till RCOP was filed instead, he has filed O.P.1 of 2003 for depositing the rental arrears which would clearly indicate that that period has got to be considered as wilful and the Rent Control Appellate Authority was perfectly correct in ordering eviction and hence the order of the appellate authority on the ground of wilful default is sustained.

8. Taking into consideration the fact that the tenant is actually residing with his family members and for shifting his residence to some other place, reasonable time has got to be

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given. This Court is of the considered opinion that nine months time from the date of receipt of a copy of this order has to be given to the petitioner/tenant to vacate and hand over possession to the respondents/landlord. The revision petitioner/tenant is directed to file an undertaking affidavit to that effect within a period of two weeks from today.

9. The Civil Revision Petition is disposed of. No costs. Consequently, MP.No.1of 2006 is closed.

VJY

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Principal Sub Judge,
Rent Control Appellate Authority
Krishnagiri.

2. The Rent Controller,
District Munsif, Krishnagiri

3. The Section Officer,
VR Section, High Court,
Madras.

+ 1 cc to Mr. V. Raghavachari, Advocate, SR No.47003

+ 1 cc to Ms. S. Agalya, Advocate, SR No.46662

KK(CO)
SR/17.8.2007

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